93-760

Supreme Court, U.S.
FILED
AUG 24 1993
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Case No._____

SUPREME COURT OF THE UNITED STATES

October 1993 Term

VICENTE E. BORJA

Petitioner

v.

GOVERNMENT OF THE UNITED STATES

Respondent

Petition for Writ of Certiorari to the
U.S. Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Vicente E. Borja
434 W. 41st Street, Apt. G-6
Casa Verde Apartments,
San Bernardino, California
92407
(909) 881-4863

BEST AVAIL

QUESTION PRESENTED

The question presented by Petitioner-Appellant is that Public Law 79-301 or First Recession Act of 1946 (now codified as 38 U.S.C. 107) is unconstitutional. Civil complaint Case No. CV-92-293-AHS (RWR) was filed on May 4, 1992 with the U.S. District Court of Santa Ana, Central District of California by VICENTE E. BORJA, Plaintiff v. Government of the United States, Defendant represented by the U.S. Attorney, Central District of California. The U.S. District Judge, Alice Marie H. Stotler in a Judgment dated December 28, 1992, adjudged that Judgment be entered in favor of Defendant and against Plaintiff.

Plaintiff-Appellant appealed to the United States Court of Appeals For the Ninth Circuit, U.S. Court of Appeals No. 93-55969, U.S. District Court No. CV-92-293-AHS (RWR) filed on July 22, 1993 with Time Schedule Order for Appellant-Petitioner to submit his opening brief before August 31, 1993. On August 6, 1993, Appellant-Petitioner submitted his Appellant's or Petitioner's Informal brief with

ABLE COPY

the U.S. Court of Appeals for the Ninth Circuit. An ORDER from the U.S. Court of Appeals For the Ninth Circuit dated August 16, 1993 composed of PREGERSON, BRUNETTI AND RYMER, Circuit Judges was silent on the unconstitutionality of Public Law 79-301. Every citizen of the United States of America and all WW II USAFFE Veterans especially VICENTE E. BORJA, aggrieved party are entitled to know the answer to the question propounded by Appellant-Petitioner before the U.S. District Court, Central District of California in which the U.S. Court of Appeals For the Ninth Circuit failed to resolve. Appellant-Petitioner is seeking justice fervently prays for a review, resolution and final judgment of his case with the highest court of the land, the United States Supreme Court.

PARTIES TO THE PROCEEDING

All parties in the U.S. District Court, Central District of California, U.S. Attorney, Central District of California, U.S. Court of Appeals For the Ninth Circuit, appear in the caption of this petition. Co-defendants at the trial in the U.S. District Court, Central District of California were Terree A. Bowers, United States Attorney, Leon W. Weidman, Assistant U.S. Attorney, Chief, Civil Division and Jon Pearson, Assistant U.S. Attorney.

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OPINIONS BELOW

Perhaps the Court's best known case, Marbury v. Madison, came before the Supreme Court in 1803, after a divisive Presidential election. In its decision the court established the power of judicial review, the authority of the judicial branch to review acts of the legislative and executive branches and strike them down if they violated the Constitution.

The principle of Judicial review established in this case was eloquently described in the Court's opinion.

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the court must decide on the operation of each."

The cases and issues change with the years, but this fundamental principle of judicial review remains the cornerstone of the Court's role in our national government.

JURISDICTIONAL GROUNDS

In compliance with Article III of the Constitution and Rules of the Supreme Court of the United States.

PART III. JURISDICTION ON WRIT OF CERTIORARI

Rule 10.

Considerations Governing Review on Writ of Certiorari

1. A review on writ of certiorari is not a matter of right but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

   (c) When a state court or United States court of appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Petitioner Borja seeks this Court's review pursuant to 28 U.S.C. Section 1257 (3), which confers jurisdiction on this Court. The Petitioner submits, pursuant to Rule 10.1 (c) Rules of the Supreme Court of the United States, that the U.S. Court of Appeals For the Ninth Circuit's ORDER dismissed Appeal for lack of jurisdiction. It is Appellant-Petitioner's understanding the U.S. Court of Appeals For the Ninth Circuit on technical grounds which is obvious dismissed Appeal inhibiting its legal power to administer and enforce the Constitution of the United States and the established precedent case Marbury v. Madison, 1803, hence, this Writ of Certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

At issue in this proceeding are:

1. Public Law 79-301 violated Article II, Section 1 and Section 2 of the Constitution of the United States of America, which provides in relevant part:

* * *

> Section 1: (The President; the Executive power.) The executive power shall be vested in a President of the United States of America.
>
> Section 2: (The President to be Commander in-Chief of Army and Navy and Head of Executive Departments: may grant reprieves and pardons.-) The President shall be Commander in-Chief of Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States, etc.

2. Public Law 79-301 violated Article IV,

> Section 2: (Privileges of citizens.-) The citizens of each State shall be entitled to all

privileges and immunities of citizens in the several States.

3. Public Law 79-301 violated Article XIV,

Section 1: (Citizenship defined.) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, or property without due process of law; nor shall any State deprived any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Public Law 79-301 violated Article XIV,

Section 4: (Public debt not to be questioned, payments of debts and claims incurred in aid of rebellion forbidden. The validity of the public debt of the United States, authorized by law, including debts incurred in payment of pensions and bounties of services in

suppressing insurrection or rebellion shall not be questioned.) But neither the United States, or any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.

5. Public Law 79-301 violated Article XIII,

Section 1: (Slavery prohibited.) "Neither slavery, nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

6. Law to be declared unconstitutional by U.S. Supreme Court:

Judiciary Act of 1789. Case: Marbury v. Madison, 1803.

STATEMENT OF THE CASE

Facts

On May 4, 1992, VICENTE E. BORJA, World War II USAFFE Veteran, Age 70 years old, a naturalized U.S. citizen, Certificate of Naturalization No. 14907197, INS Registration No. A27895070, Petition No. 420958, at San Francisco, California on August 16, 1991.

Residence:

2777 Mendoza Drive,
Costa Mesa, California-92626

VICENTE E. BORJA, Plaintiff filed a civil complaint Case No. CV-92-293-AHS-(RWR) with the U.S. District Court Central District of California, that Public Law 79-301 (now codified as 38 U.S.C. 107) is unconstitutional.

VICENTE E. BORJA, Plaintiff demanded FIFTY MILLION ($50 Million) DOLLARS payment for damages causing loss of rights, privileges, immunities, Veterans Benefits, lost economic opportunities and an irreparable damage to his reputation by degrading and desecrating the honor

and blood of heroes, martyrs and survivors of World War II and their families.

U.S. District Judge, AliceMarie H. Stotler in a JUDGMENT dated December 28, 1992, Judgment was entered in favor of Defendant and against Plaintiff. Plaintiff filed an Appeal with the U.S. Court of Appeals For the Ninth Circuit on July 22, 1993, Case No. 93-55969, with a Time Schedule Order for Plaintiff-Appellant to submit his opening brief before August 31, 1993. On August 6, 1993, Appellant-Petitioner submitted his Appellant-Petitioner's Informal Brief. An ORDER dated August 16, 1993, from the U.S. Court of Appeals For the Ninth Circuit, PREGERSON, BRUNETTI and RYMER, Circuit Judges, dismissed Appeal for lack of jurisdiction, hence, this petition for writ of certiorari.

Present residence:

434 W. 41st Street,/Apt. G-6
Casa Verde Apartments
San Bernardino, California-92407

RAISING THE FEDERAL QUESTION

Is Public Law 79-301 or First Recession Act of 1946 (now codified as 38 U.S.C. 107) unconstitutional? Appellant-Petitioner assert and re-affirm his conviction that Public Law 79-301 is unconstitutional for having violated the Constitution of the United States of America, therefore, must be declared unconstitutional by the Supreme Court of the United States.

ARGUMENT

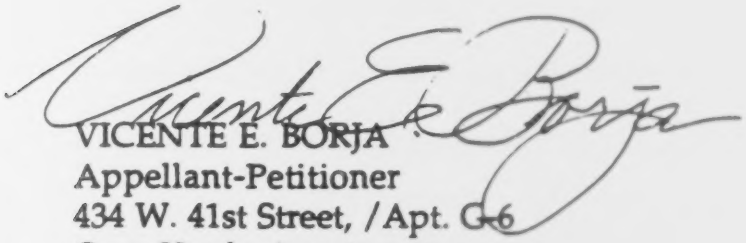
Summary of Argument

VICENTE E. BORJA, Appellant-Petitioner filed an Appeal with the U.S. Court of Appeals For the Ninth Circuit on July 22, 1993, docketed Case No. 93-55969. The U.S. Court of Appeals For the Ninth Circuit, by an ORDER dated August 16, 1993, PREGERSON, BRUNETTI and RYMER, Circuit Judges, dismissed Appeal for lack of jurisdiction. Appellant-Petitioner has no other recourse but to write a Petition for a Writ of Certiorari to the U.S. Court of Appeals For the Ninth Circuit who failed to prove beyond a reasonable doubt that Public Law 79-301 or First Recession Act of 1946 (now codified as 38 U.S.C. 107) is constitutional.

CONCLUSION

For these reasons, Petitioner VICENTE E. BORJA respectfully prays that this Court accept jurisdiction and issue its Writ of Certiorari in this cause to the U.S. Court of Appeals For the Ninth Circuit for an ultimate JUDGMENT.

Respectfully submitted,



VICENTE E. BORJA
Appellant-Petitioner
434 W. 41st Street, /Apt. G-6
Casa Verde Apartments,
San Bernardino, California-92407
Telephone No. (909) 881-4863

Case No. _____

SUPREME COURT OF THE UNITED STATES

October 1993 Term

VICENTE E. BORJA

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v.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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434 W. 41st Street, Apt. G-6
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MILITARY ORDER of PRESIDENT
FRANKLIN DELANO ROOSEVELT ———— 12-13

ORDER, United States Court of Appeals
For the Ninth Circuit

Before: Pregerson, Brunetti and RYMER
Circuit Judges - - - - - - -14-15

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICENTE E. BORJA Plaintiff, vs UNITED STATES GOVERNMENT Defendant,	CASE No. SACV 92-293-AHS(RWR) JUDGMENT (THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, Rule 77(d).

Pursuant to the Order of the Court adopting the Statement of Uncontroverted Facts and Conclusion of Law and recommendations of the United States Magistrate Judge.

It is ADJUDGED THAT Judgment be entered in favor of the Defendant and against the Plaintiff.

ated: December 28, 1992

"ALICEMARIE H. STOTLER"
UNITED STATES DISTRICT JUDGE

CASE NO. 93-55969

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICENTE E. BORJA Appellant/Petitioner	) U.S. COURT OF APPEALS) Docket Number : 93-55969) U.S. District Court) Docket Number:) CV-92-293-AHS (RWR)
v.	)
	) Public Law 79-301 or First) Recession Act of 1946 is) unconstitutional.
GOVERNMENT OF THE UNITED STATES Appellee/Respondent	)

APPELLANT'S OR PETITIONER'S
INFORMAL BRIEF

1. JURISDICTION

   a. Timeliness of Appeal or Petition:

      (i) Date of Entry of judgment or order of district court: December 28, 1992

      (ii) Date of Service of any motion made after judgment (other than for fees and costs): January 8, 1993

      (iii) Date of Entry deciding motion: June 8, 1993

      (iv) Date Notice of Appeal or Petition filed: July 22, 1993

b. ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing
2. The district court's entry of judgment
3. The district court's docket sheet

2. What are the facts of your case?

A. Appellant VICENTE E. BORJA, 71 years old, World War II USAFFE Veteran, a naturalized United States citizen on August 16, 1991 in San Francisco, California. Certificate of Naturalization No. 14907197, INS Registration No. A27895070, Petition No. 420958.

Present address:

434 W. 41st Street, / Apt. G-6
Casa Verde Apartments
San Bernardino, California

Former address:

2777 Mendoza Drive
Costa Mesa, California-92626

B. Filed a Civil Complaint SA CV-92-293-AHS (RWR) VICENTE E. BORJA v. GOVERNMENT OF THE UNITED STATES with the U.S. District Court, Santa Ana, California on

May 4, 1992 challenging that Public Law 79-301 or the First Recession Act of 1946 is unconstitutional for the following reasons:

1. The Executive Order of President Franklin D. Roosevelt signed at the White House on July 26, 1941 in pursuance to a Declaration of War against the Japanese Empire by the Congress of the United States in Joint-session on December 11, 1941 called and ordered all of the organized military forces of the Government of the Commonwealth of the Philippines into the service of the Armed Forces of the United States for the period of the existing emergency cannot be nullified, detracted, subtracted, added or modified by Public Law 79-301 enacted only in 1946 after the war between the United States and Japan ended.

2. The Executive Order of President Franklin D. Roosevelt a document of public debt not to be questioned. Public Law 79-301 violated Article XIV, Section 4 of the Constitution of the United States. (Public debt not to be questioned, payments of debts and claims incurred in aid of

rebellion forbidden.) The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. (But neither the United States, or any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.)

3. My rights as a naturalized United States citizen have been violated by Public Law 79-301 under Article XIV, Section 1 of the Constitution of the United States. (Citizenship defined; privileges of citizens.) "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. Article XIV, Section 1 emphasized another violation of Public Law 79-301 of the Constitution of the United States under Article IV, Section 2. (Privileges of citizens.-)

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

3. What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?

Appellant/Petitioner demanded the amount of FIFTY MILLION ($50 MILLION) DOLLARS only to rectify a grievous wrong done to me and my family and as payment to the forty-six years of wanton neglect by the Government of the United States causing the damages namely; cutting-off our rights and privileges to United States citizenship, rights and privileges to enjoy full Veterans Benefits administered by the Department of Veterans

Affairs, loss of economic opportunities and an irreparable damage to my reputation by degrading and desecrating the blood of heroes, martyrs and survivors of World War II and our families.

4. State the claim or claims you raised at the district court.

"Plaintiff's Response to Defendant's First Set of Interrogatories to Plaintiff." is attached as EXHIBIT "A"

5. What issues are you raising on appeal?

Public Law 79-301 is unconstitutional for violating my rights as a naturalized United States citizen under Article XIV, Section 1 and under Article IV, Section 2 of the Constitution of the United States.

Public Law 79-301 is an evidence of usurpation of power by the Congress of the United States when it violated Article II, Section 1 and Section 2 of the Constitution of the United States vesting in the President of the United States Executive power.

Defendant argued that the Executive Order of President Franklin D. Roosevelt does not grant benefits to Filipino Veterans of World War II ran counter to Article XIII, Section 1 of the Constitution of the United States. (Slavery prohibited.) "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Defendant also argued that Filipino Veterans of WW II were not "active servicemen" a term used when Public Law 79-301 was codified as 38 U.S.C. 107. It is more prudent to say that Filipino Veterans of World War II were "active servicemen" those who were duly inducted into the service of the United States Armed Forces in the Far East (USAFFE) and served honorably until World War II ended. Speaking of United States citizens mere military service in the U.S. Army, U.S. Navy, U.S. Air Force and in the Marine Corps not rendered during World War II does not qualify such servicemen as World War II Veterans except if

they continue to serve in the Korean War and for that reason may qualify as Korean War Veterans. There were many servicemen thousands of new recruits who entered the military service after World War II ended.

6. Did you present these issues to the district court?

No I had little time to research on the issues.

7. What law supports these issues on appeal?

The Constitution of the United States and a precedent established by the United States Supreme Court declaring Judiciary Act of 1789 unconstitutional.

"Law to be declared unconstitutional by U.S. Supreme Court: Judiciary Act of 1789, Case: Marbury v. Madison. 1803."

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

NONE

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

NONE

CONCLUSION

In conclusion the U.S. District Court obstructed the Administration of Justice by refusing Assent to Laws in conformity with the Constitution of the United States and precedent established by the United States Supreme Court and on the other hand Congress of the United States ignored the existence of the unconstitutionality of Public Law 79-301 by repeated injuries and usurpation of power reduced Filipino Veterans of World War II to mere peons of the Government of the United States of America under absolute tyranny unless Public Law 79-301 is declared unconstitutional. Public Law 79-301 covered a period of forty-seven years of agony and misery for Filipino Veterans of World War II. "But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a

design to reduce them under absolute Despotism, it is their right, it is their duty to throw off such "law" and to provide new Guards for their future security."

"Vicente E. Borja"

VICENTE E. BORJA
Appellant

CASE NO. 93-55969

MILITARY ORDER

"ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES CALLED INTO SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

"Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2 (a) (12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a general officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: Provided, That all naval component thereof shall be placed under

the command of the Commandant of the Sixteenth Naval District, United States Navy.

"This Order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the days and hours, respectively, indicated in orders to be issued from time to time by the general officer, United States Army, designated by the Secretary of War.

"FRANKLIN D. ROOSEVELT"

"The White House, July 26, 1941"

FILED

AUG. 16, 1993

CATHY A. CATTERSON
Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICENTE E. BORJA	No. 93-55969
Plaintiff-Appellant,	DC# CV-92-293-AHS Central California (Los Angeles)
vs	
UNITED STATES OF AMERICA	ORDER
Defendant-Appellee	

Before: PREGERSON, BRUNETTI and RYMER, Circuit Judges

A review of the record in this case demonstrates that this court lacks jurisdiction over this appeal because the notice of appeal was untimely filed. See Fed. R. App. P. 4(a)(1).

Because Appellant failed to file a timely notice of appeal or a timely motion for an extension of time pursuant to Fed. R. App. P. 4(a)(5) or (6), this court lacks jurisdiction over the appeal. See Alexander v. Sacha, 439 F.2d 742 (9th Cir. 1971 (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

1st Indorsement
August 19, 1993

Respectfully forwarded to the Honorable Clerk of Court, U.S. Supreme Court the Civil Case No. 93-55969 DC# CV-92-293-AHS of VICENTE E. BORJA, Plaintiff-Appellant v. Government of the United States of America an ORDER

dated August 16, 1993 of the U.S. Court of Appeals For the Ninth Circuit adverse to Plaintiff-Appellant for a review and final judgment by the United States Supreme Court.

"VICENTE E. BORJA"
Appellant

PSMoCal 8/11/93sg

RECEIVED

Aug. 24, 1993

OFFICE OF THE CLERK
SUPREME COURT, U.S.